EMPLOYMENT LAW UPDATE: GOVERNOR BROWN SIGNS NEW LEGISLATION BANNING INQUIRY INTO APPLICANTS' PAY HISTORY AND REQUIRING SMALL EMPLOYERS TO PROVIDE BABY BONDING LEAVE

On October 12, 2017, Governor Brown signed two significant employment bills into law, one prohibiting all California employers from inquiring into salary history information, and another imposing new baby bonding requirements on employers with 20-49 employees.

Employers May Not Inquire into Applicants' Pay History

Governor Brown recently signed into law a new statute that prohibits all California employers from asking job applicants for their pay history or considering that pay history when making decisions regarding whether to make an offer to hire the applicant and in determining how much to compensate the applicant if hired. The new law becomes effective January 1, 2018, effectively preempting much of the **San Francisco ordinance we told you about on August 18, 2017** that goes into effect July 1, 2018. (We'll discuss what you still need to know about the San Francisco ordinance at our annual employment law update seminar in January.)

Specifically, the new statute prohibits an employer from:

1. Seeking salary history information, including compensation and benefits, about an applicant for employment, whether orally, in writing, personally, or through an agent.
2. Relying on salary history information of an applicant as a factor in determining whether to offer employment to the applicant.
3. Considering salary history information of an applicant in determining what salary to offer an applicant.

Further, if an applicant reasonably requests the pay scale for the position, an employer must provide that information. Employers are still permitted to discuss with prospective employees what their salary expectations are.

Notwithstanding the prohibitions in 1-3 above, if an applicant voluntarily and without prompting discloses salary history information to a prospective employer, the statute does not prohibit that

employer from considering or relying on that information in determining salary for that applicant. But remember, in accordance with existing equal pay laws, prior salary, alone, cannot be used to justify any disparity in compensation between employees of the same sex, race, or ethnicity.

In essence, this new statute focuses the inquiry on whether the employee is qualified for the position, and it is up to the employer to determine what the appropriate pay scale is based on those qualifications without regard to the applicant's prior pay.

Smaller Employers Must Offer Baby Bonding Leave

Effective January 1, 2018, employers with 20 or more employees must offer FMLA-like baby bonding leave under the newly enacted New Parent Leave Act.

Now, employers with at least 20 employees within a 75-mile radius must permit eligible employees up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement. Employees are eligible if they have more than 12 months of service with the employer, have worked at least 1,250 hours in the previous 12-month period, and work at a worksite with 20 or more employees within a 75-mile radius. Employees who take such baby bonding leave must be guaranteed the same or a comparable position upon returning from the leave.

Although the leave is unpaid, employees are entitled to use accrued vacation, sick leave, or paid time off.

Employers must maintain and pay for group health insurance for an employee taking parental leave to the same extent and under the same conditions that coverage would have been provided had the employee not taken leave. However, in some circumstances, if the employee fails to return from leave, the employer may recover the premium that it paid for maintaining group health insurance.

If both parents work for the same employer, the employer need not grant more than 12 combined weeks of leave; the employer may, but is not required to, grant simultaneous leave to both employees.

Employers may not discriminate against an individual for exercising the right to parental leave or giving information or testimony as to parental leave, and may not interfere with, restrain, or deny the exercise of rights under the New Parent Leave Act.

Affected employers should update their policies to conform to the new law. Come to our employment law update seminar to learn more.

If you have any questions about this or any other employment law issue, **Hoge Fenton's Employment Law Team** is here to help.

Jenn Protas helps employers navigate California's numerous employment laws and defends employers with an eye toward successful, yet cost-effective resolution. Jenn builds relationships with her clients to better understand their businesses and provide counsel on a range of subjects, including employee leave issues, personnel management, hiring, terminations, and wage and hour practices. In addition, Jenn has substantial experience drafting employer policies, handbooks, confidentiality and nondisclosure agreements (NDAs), incentive compensation agreements, separation agreements, and settlement agreements.

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